



UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	09/002 133	Applicant(s)	Roddy
Examiner	Rader	Group Art Unit	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 5-27-98

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-26 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-26 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413

Notice of References Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted state of the prior art at pages 1 and 2 or the specification in view of Wesdorp and Singer.

Applicant admits that it is known to make margarine-like food products that contain a mesomorphic phase and a gelled aqueous phase that includes gelatin. Applicant further cites example II.23 of Wesdorp. Applicant also admits that low fat foods do not have strongly perceived flavors. Applicant additionally admits that it is known to fortify food products with lipophilic flavors and cites Singer to show the use of triglyceride fats as carriers. The claims appear to differ from the admitted prior art in the use of the two technologies together. Wesdorp teaches the use of flavor components in the manufacture of foods and spreads that contain mesomorphic phases. Thus to use the flavor composition of Singer in the food product of Wesdorp is seen to be an obvious means of enhancing the perceived flavor of the food.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wesdorp in view of Singer for reasons of record used in rejecting claims 13-19 and 22-24 in the last office action.

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Applicant argues that there is nothing in Wesdorp that teaches a food continuing a mesomorphic phase with less than 5% triglyceride fat and 0.001% flavor. This is disagreed with because all of the examples are directed to food products that contain all of the features of the claims. Applicant argues claim 12. This has been considered but is not persuasive because at example II.23 the biopolymers gelatin and starch are used in the aqueous phase which is mixed with the mesomorphic phase.

Applicant argues that one would not use the product of Singer in the product of Wesdorp. This is disagreed with because Wesdorp adds flavor to his products. To add the flavor of Singer to the product of Wesdorp is seen to be an obvious way of flavoring a food product without adding large amounts of fat to it.

Claims 1 and 3-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heertje in view of Singer.

Applicant argues that there is nothing in Heertje to suggest including the flavor of Singer. This has been considered but is not persuasive because many of the examples in Heertje require the use of a flavor component. To use the flavor of Singer in the product of Heertje is seen to be an obvious way of improving the taste of the final product. The inclusion of the biopolymeric phase as set forth in claim 12 is shown in Heertje at column 11, lines 1-28 and example 4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Paden whose telephone number is (703) 308-3294. The examiner can normally be reached on Monday to Friday from 8:30 to 4:00.

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The fax phone number for this Group is (703) 305-3599 or 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

CAROLYN PADEN
CAROLYN PADEN
PRIMARY EXAMINER
ART UNIT 132-161